spent by the employee in each type of work is not material. If he spends any part of the workweek in covered work he will be considered on exactly the same basis as if he had engaged exclusively in such work for the entire period. Accordingly, the total number of hours which he works during the workweek at both types of work must be compensated for in accordance with the minimum wage and overtime pay provisions of the Act.

(b) It is thus recognized that an employee may be subject to the Act in one workweek and not in the next. It is likewise true that some employees of an employer may be subject to the Act and others not. But the burden of effecting segregation between covered and noncovered work as between particular workweeks for a given employee or as between different groups of employees is upon the employer. Where covered work is being regularly or recurrently performed by his employees, and the employer seeks to segregate such work and thereby relieve himself of his obligations under sections 6 and 7 with respect to particular employees in particular workweeks, he should be prepared to show, and to demonstrate from his records, that such employees in those workweeks did not engage in any activities in interstate or foreign commerce or in the production of goods for such commerce, which would necessarily include a showing that such employees did not handle or work on goods or materials shipped in commerce or used in production of goods for commerce, or engage in any other work closely related and directly essential to production of goods for commerce.[14] The Division's experience has indicated that much so-called ''segregation'' does not satisfy these tests and that many so-called ''segregated'' employees are in fact engaged in commerce or in the production of goods for commerce.

§ 776.5 Coverage not dependent on method of compensation.

The Act's individual employee coverage is not limited to employees working on an hourly wage. The requirements of section 6 as to minimum wages are that ''each'' employee described therein shall be paid wages at a rate not less than a specified rate ''an hour''.[15] This does not mean that employees cannot be paid on a piecework basis or on a salary, commission, or other basis; it merely means that whatever the basis on which the workers are paid, whether it be monthly, weekly, or on a piecework basis, they must receive at least the equivalent of the minimum hourly rate. ''Each'' and ''any'' employee obviously and necessarily includes one compensated by a unit of time, by the piece, or by any other measurement.[16] Regulations prescribed by the Administrator (part 516 of this chapter) provide for the keeping of records in such form as to enable compensation on a piecework or other basis to be translated into an hourly rate.[17]

[35 FR 5543, Apr. 3, 1970]

§ 776.6 Coverage not dependent on place of work.

Except for the general geographical limitations discussed in § 776.7, the Act contains no prescription as to the place where the employee must work in order to come within its coverage. It follows that employees otherwise coming within the terms of the Act are entitled to its benefits whether they perform their work at home, in the factory, or elsewhere.[18] The specific provisions of the Act relative to regulation of homework serve to emphasize this fact.[19]

§ 776.7 Geographical scope of coverage.

(a) The geographical areas within which the employees are to be deemed

[14] See *Guess* v. *Montague,* 140 F. 2d 500 (C.A. 4).

[15] Special exceptions are made for Puerto Rico, the Virgin Islands, and American Samoa.

[16] *United States* v. *Rosenwasser,* 323 U.S. 360.

[17] For methods of translating other forms of compensation into an hourly rate for purposes of sections 6 and 7, see parts 531 and 778 of this chapter.

[18] *Walling* v. *American Needlecrafts,* 139 F. 2d 60 (C.A. 6); *Walling* v. *Twyeffort Inc.,* 158 F. 2d 944 (C.A. 2); *McComb* v. *Homeworkers' Handicraft Cooperative,* 176 F. 2d 633 (C.A. 4).

[19] See 6(a)(2); Sec. 11(d).

''engaged in commerce or in the production of goods for commerce'' within the meaning of the Act, and thus within its coverage are governed by definitions in section 3 (b), (c), and (j). In the definition of ''produced'' in section 3(j), ''production'' is expressly confined to described employments ''in any State.'' (See §776.15 (a).) ''Commerce'' is defined to mean described activities ''among the several States or between any State and any place outside thereof.'' (See §776.8.) ''State'' is defined in section 3(c) to mean ''any State of the United States or the District of Columbia or any Territory or possession of the United States.''

(b) Under the definitions in paragraph (a) of this section, employees within the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462, 43 U.S.C. 1331); American Samoa; Guam; Wake Island; Enewetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone are dealt with on the same basis as employees working in any of the 50 States.[20] Congress did not exercise the national legislative power over the District of Columbia or the Territories or possessions referred to by extending the Act to purely local commerce within them.

[15 FR 2925, May 17, 1950, as amended at 35 FR 5543, Apr. 3, 1970]

ENGAGING ''IN COMMERCE''

§776.8 The statutory provisions.

(a) The activities constituting ''commerce'' within the meaning of the phrase ''engaged in commerce'' in sections 6 and 7 of the Act are defined in section 3(b) as follows:

> *Commerce* means trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof.[21]

As has been noted in §776.7, the word ''State'' in this definition refers not only to any of the fifty States but also to the District of Columbia and to any Territory or possession of the United States.

(b) It should be observed that the term *commerce* is very broadly defined. The definition does not limit the term to transportation, or to the ''commercial'' transactions involved in ''trade,'' although these are expressly included. Neither is the term confined to commerce in ''goods.'' Obviously, ''transportation'' or ''commerce'' between any State and any place outside its boundaries includes a movement of persons as well as a movement of goods. And ''transmission'' or ''communication'' across State lines constitutes ''commerce'' under the definition, without reference to whether anything so transmitted or communicated is ''goods.'' [22]

The inclusion of the term ''commerce'' in the definition of the same term as used in the Act implies that no special or limited meaning is intended; rather, that the scope of the term for purposes of the Act is at least as broad as it would be under concepts of ''commerce'' established without reference to this definition.

[20] An amendment to the Fair Labor Standards Act of 1938, 71 Stat. 514 (approved Aug. 30, 1957) provides that no employer shall be subject to any liability or punishment under the Act with respect to work performed at any time in work places excluded from the Act's coverage by this law or for work performed prior to Nov. 29, 1957, on Guam, Wake Island, or the Canal Zone; or for work performed prior to the establishment, by the Secretary, of a minimum wage rate applicable to such work in American Samoa. Work performed by employees in ''a work place within a foreign country or within territory under the jurisdiction of the United States'' other than those enumerated in this paragraph is exempt by this amendment from coverage under the Act. When part of the work performed by an employee for an employer in any workweek is covered work performed in any State, it makes no difference where the remainder of such work is performed; the employee is entitled to the benefits of the Act for the entire workweek unless he comes within some specific exemption. The reference in 71 Stat. 514 to liability for work performed in American Samoa is an extension of the relief granted by the American Samoa Labor Standards Amendments of 1956 (29 U.S.C. Supp. IV, secs. 206, 213, and 216).

[21] As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

[22] ''Goods'' is, however, broadly defined in the Act. See §776.20(a).